

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MYPORT, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD. and
SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants.

Civil Action No. 2:22-cv-00114

JURY TRIAL DEMANDED

**DEFENDANTS' AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO
COMPLAINT**

Defendants Samsung Electronics Co., Ltd. ("SEC") and Samsung Electronics America, Inc. ("SEA") (collectively referred to herein as "Samsung" or "Defendants") by and through their undersigned attorneys file this Amended Answer to the Complaint for Patent Infringement ("Complaint"; Dkt. No. 1) filed by Plaintiff MyPort, Inc. ("MyPort" or "Plaintiff") and Affirmative Defenses. Samsung denies the allegations and characterizations in MyPort's Complaint unless expressly admitted in the following numbered Paragraphs, which correspond to the numbered Paragraphs in the Complaint.

THE PARTIES

1. Samsung lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint, and therefore denies them.

2. SEC admits it is a Korean corporation having a principal place of business at 129 Samsung-ro, Yeongtong-Gu, Suwon-Si, Gyeonggi-Do, 16677, Republic of Korea.

3. SEA admits it is a New York corporation having a principal place of business at 85 Challenger Rd., Ridgefield Park, New Jersey 07660.

4. Samsung admits that SEA is a wholly-owned subsidiary of SEC.

JURISDICTION AND VENUE

5. Samsung admits that the Complaint purports to state a claim for patent infringement under the patent laws of the United States, Title 35 U.S.C. § 1, *et seq.* Samsung denies that MyPort's claims are meritorious or that Samsung has committed any act of patent infringement.

6. Samsung does not contest that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Samsung does not contest, solely for purposes of the present litigation, whether venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b). Samsung reserves the right to seek transfer to a more appropriate or convenient forum.

8. SEA admits that it is registered to conduct business in the State of Texas and maintains an office at 6625 Excellence Way, Plano, Texas and 1100 Klein Road, Plano, Texas. SEA admits that it employs full-time personnel at its 6625 Excellence Way, Plano, Texas office and its 1100 Klein Road, Plano, Texas office, including certain sales personnel and engineers. SEA further admits that it has a Texas Taxpayer number of 11329511536. Samsung denies any remaining allegations in Paragraph 8 of the Complaint.

9. This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Samsung admits that SEC is not a resident of the United States. Samsung denies any remaining allegations in Paragraph 9 of the Complaint.

10. Samsung admits that this Court has personal jurisdiction over Samsung. Samsung admits that SEA conducts business within this District. Samsung denies that it has committed any

acts of infringement as alleged by Plaintiff. Samsung denies all remaining allegations in Paragraph 10 of the Complaint.

11. Samsung denies that it has committed any acts of infringement as alleged by Plaintiff. Samsung denies any remaining allegations in Paragraph 11 of the Complaint.

12. Samsung denies the allegations in Paragraph 12 of the Complaint.

PATENTS-IN-SUIT

13. Samsung admits United States Patent No. 9,823,017 (the “’017 patent”) is entitled “Apparatus for personal voice assistant, location services, multi-media capture, transmission, speech to text conversion, photo/video image/object recognition, creation of searchable metatag(s)/ contextual tag(s), storage and search retrieval” and appears on its face to have issued on November 28, 2017. Samsung also admits that Exhibit A to the Complaint purports to be a copy of the ’017 patent.

14. Samsung admits that United States Patent No. 10,237,067 is entitled “Apparatus for voice assistant, location tagging, multi-media capture, transmission, speech to text conversion, photo/video image/object recognition, creation of searchable metatags/contextual tags, storage and search retrieval” and appears on its face to have issued on March 19, 2019. Samsung also admits that Exhibit B to the Complaint purports to be a copy of the ’067 patent.

15. Samsung admits that United States Patent No. 10,721,066 is entitled “Method for voice assistant, location tagging, multi-media capture, transmission, speech to text conversion, photo/video image/object recognition, creation of searchable metatags/contextual tags, storage and search retrieval” and appears on its face to have issued on July 21, 2020. Samsung also admits that Exhibit C to the Complaint purports to be a copy of the ’066 patent.

16. Samsung lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint and therefore denies them.

BACKGROUND

17. Samsung incorporates by reference its responses to Paragraphs 1-16 of the Complaint.

18. Samsung lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint and therefore denies them.

19. Samsung lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint and therefore denies them.

20. Samsung lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint and therefore denies them.

21. Samsung lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint and therefore denies them.

22. Samsung denies that the patented inventions solved any problems that had not been addressed in the prior art. Samsung further responds that the interpretation of the claims is a question of law and therefore this Paragraph 22 purporting to summarize the claims through allegations regarding the “patented inventions” does not require a response. To the extent that a response is required and insofar as MyPort is characterizing the patent claims in a manner inconsistent with the claim language, Samsung denies the allegations in Paragraph 22 of the Complaint. Samsung denies any remaining allegations in Paragraph 22 of the Complaint.

23. Samsung denies that MyPort’s patents are essential to modern photo and gallery application development. Samsung otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 23 and therefore denies them.

24. Paragraph 24 contains legal conclusions to which no answer is required. To the extent an answer is required, Samsung denies the allegations in Paragraph 24 of the Complaint.

25. Paragraph 25 contains legal conclusions to which no answer is required. To the extent an answer is required, Samsung denies the allegations in Paragraph 25 of the Complaint.

ALLEGATIONS OF PATENT INFRINGEMENT

26. Samsung admits that SEC makes products that include, but are not limited to, smartphones and tablets. Samsung further admits that the Complaint purports to accuse different versions of the Samsung Galaxy smartphones and tablets, such as the Galaxy S7, Galaxy S7 Edge, Galaxy S8, Galaxy S8+, Galaxy Note8, Galaxy S9, Galaxy S9+, Galaxy Note9, Galaxy S10, Galaxy S10e, Galaxy S10 5G, Galaxy S10 lite, Galaxy S10 5G, Galaxy Book2, Galaxy S21 Ultra 5G, Galaxy S21+ 5G, Galaxy S21 5G, Galaxy S20 5G, Galaxy S20+ 5G, Galaxy S20 FE 5G, Galaxy Book S, Galaxy Tab S7 5G, Galaxy Z Fold2 5G, Galaxy Z Fold3 5G, Galaxy Z Flip 5G, Galaxy Z Flip3 5G, Galaxy A71 5G, Galaxy Note 10, Galaxy Note 10+, and Galaxy Note 10+ 5G of infringement. Samsung denies that any Samsung product infringes any claim of the patents-in-suit either literally or under the doctrine of equivalents. Samsung denies any remaining allegations in Paragraph 26 of the Complaint.

27. Samsung admits that MyPort IP, Inc. filed suit against Samsung in Civil Action No. 6:11-cv-00246 in this District on May 13, 2011 (“the 2011 MyPort IP Litigation”) and alleged patent infringement. That suit was terminated when all claims of both patents-in-suit were cancelled by the United States Patent and Trademark Office because they were unpatentable. Samsung denies that the 2011 MyPort IP Litigation involved or put Samsung on notice of MyPort’s patent portfolio or that it imposed upon Samsung any continuing obligation to be aware of further prosecution related to patents that had been cancelled by the Patent Office. Samsung further denies that it has infringed any of the patents-in-suit or that it should been aware of such infringement. Samsung admits that SEA personnel received an email on April 13, 2022, two days before the filing of the Complaint, which attached a letter from “John Lord,” purporting to represent “MyPort,

Inc.” The letter says that “MyPort” owns certain patents, including the ’017, ’067, and ’066 patents and alleges that “Samsung” smartphones and tablets infringe at least claims 6 and 13, and their dependent claims, of these patents. The letter did not attach any claim charts. Samsung denies the remaining allegations in Paragraph 27 of the Complaint.

28. Samsung lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint and therefore denies them.

29. Samsung denies the allegations in Paragraph 29 of the Complaint.

COUNT I – ALLEGED INFRINGEMENT OF U.S. PATENT NO. 9,832,017

30. Samsung incorporates by reference its responses to Paragraphs 1 through 29 of the Complaint.

31. Samsung denies the allegations of Paragraph 31 of the Complaint.

32. Samsung admits that the Samsung Galaxy S21 includes a camera for, among other things, capturing an image and a microphone that is capable of capturing sound. Samsung admits that the Samsung Galaxy S21 also includes memory for storing certain information including images and audio information. This paragraph otherwise contains legal conclusions to which no answer is required. To the extent an answer is required, Samsung denies the remaining allegations in Paragraph 32 of the Complaint.

33. Samsung admits that the Samsung Galaxy S21 includes flash memory, cache memory, and RAM. This paragraph otherwise contains legal conclusions to which no answer is required. To the extent an answer is required, Samsung denies the remaining allegations in Paragraph 33 of the Complaint.

34. Samsung admits that the Samsung Galaxy S21 includes a microphone. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 34 of the Complaint.

35. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the allegations in Paragraph 35 of the Complaint.

36. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the allegations in Paragraph 36 of the Complaint.

37. Samsung admits that the Samsung Galaxy S21 can, in certain circumstances, record speech and store it in a digital form and that the camera can capture an image and store it as a digital image. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 37 of the Complaint.

38. Samsung admits that the Samsung Galaxy S21 can, in certain circumstances, be configured to perform speech recognition to convert speech to text. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 38 of the Complaint.

39. Samsung admits that the Samsung Galaxy S21 includes flash memory, cache memory, and RAM. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 39 of the Complaint.

40. Samsung denies the allegations in Paragraph 40 of the Complaint.

41. Samsung denies the allegations in Paragraph 41 of the Complaint.

42. Samsung denies the allegations in Paragraph 42 of the Complaint.

43. Samsung denies the allegations in Paragraph 43 of the Complaint.

44. Samsung denies the allegations in Paragraph 44 of the Complaint.

45. Samsung denies the allegations in Paragraph 45 of the Complaint.

COUNT II – ALLEGED INFRINGEMENT OF U.S. PATENT NO. 10,237,067

46. Samsung incorporates by reference its responses to Paragraphs 1-45 of the Complaint.

47. Samsung denies the allegations in Paragraph 47 of the Complaint.

48. Samsung admits that the Samsung Galaxy S21 includes a camera for, among other things, capturing an image and a microphone that is capable of capturing sound. Samsung admits that the Samsung Galaxy S21 also includes memory for storing certain information including images and audio information. This paragraph otherwise contains legal conclusions to which no answer is required. To the extent an answer is required, Samsung denies the remaining allegations in Paragraph 48 of the Complaint.

49. Samsung admits that the Samsung Galaxy S21 includes flash memory, cache memory, and RAM. This paragraph otherwise contains legal conclusions to which no answer is required. To the extent that an answer is required, Samsung denies the remaining in Paragraph 49 of the Complaint.

50. Samsung admits that the Samsung Galaxy S21 includes a microphone. Paragraph 50 otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 50 of the Complaint.

51. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the allegations of Paragraph 51 of the Complaint.

52. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the allegations in Paragraph 52.

53. Samsung admits that the Samsung Galaxy S21 can, in certain circumstances, record speech and store it in a digital form and the camera can capture the image and store it as a digital

image. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 53.

54. Samsung admits that the Samsung Galaxy S21 includes software with location settings. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 54 of the Complaint.

55. Samsung admits that the Samsung Galaxy S21 can, in certain circumstances, be configured to perform speech recognition to convert speech to text. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 55 of the Complaint.

56. Samsung admits that the Samsung Galaxy S21 includes flash memory, cache memory, and RAM. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 56 of the Complaint.

57. Samsung denies the allegations in Paragraph 57 of the Complaint.

58. Samsung denies the allegations in Paragraph 58 of the Complaint.

59. Samsung denies the allegations in Paragraph 59 of the Complaint.

60. Samsung denies the allegations in Paragraph 60 of the Complaint.

61. Samsung denies the allegations in Paragraph 61 of the Complaint.

62. Samsung denies the allegations in Paragraph 62 of the Complaint.

COUNT III – ALLEGED INFRINGEMENT OF U.S. PATENT NO. 10,721,066

63. Samsung incorporates by reference its responses to paragraphs 1-62 of the Complaint.

64. Samsung denies the allegations in Paragraph 64 of the Complaint.

65. Samsung admits that the Samsung Galaxy S21 includes a camera for, among other things, capturing an image and a microphone that is capable of capturing sound. Samsung admits that the Samsung Galaxy S21 also includes memory for storing certain information including images and audio information. This paragraph otherwise contains legal conclusions to which no answer is required. To the extent an answer is required, Samsung denies the remaining allegations in Paragraph 65 of the Complaint.

66. Samsung admits that the Samsung Galaxy S21 includes flash memory, cache memory, and RAM. This paragraph otherwise contains legal conclusions to which no answer is required. To the extent an answer is required, Samsung denies the remaining all allegations in Paragraph 66 of the Complaint.

67. Samsung admits that the Samsung Galaxy S21 includes a microphone. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the allegations in Paragraph 67 of the Complaint.

68. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the allegations in Paragraph 68 of the Complaint.

69. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the allegations in Paragraph 69 of the Complaint.

70. Samsung admits that the Samsung Galaxy S21 includes software with location settings. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations of Paragraph 70 of the Complaint.

71. Samsung admits that the Samsung Galaxy S21 can, in certain circumstances, record speech and store it in a digital form and that the camera can capture an image and store it as a

digital image. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations of in Paragraph 71 of the Complaint.

72. Samsung admits that the Samsung Galaxy S21 can, in certain circumstances, be configured to perform speech recognition to convert speech to text. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 72 of the Complaint.

73. Samsung admits that the Samsung Galaxy S21 includes flash memory, cache memory, and RAM. This paragraph otherwise contains legal conclusions to which no response is required. To the extent a response is required, Samsung denies the remaining allegations in Paragraph 73 of the Complaint.

74. Samsung denies the allegations in Paragraph 74 of the Complaint.

75. Samsung denies the allegations of Paragraph 75 of the Complaint.

76. Samsung denies the allegations in Paragraph 76 of the Complaint.

77. Samsung denies the allegations in Paragraph 77 of the Complaint.

78. Samsung denies the allegations in Paragraph 78 of the Complaint.

79. Samsung denies the allegations in Paragraph 79 of the Complaint.

DEMAND FOR JURY TRIAL

80. MyPort's jury demand does not require admission or denial.

RESPONSE TO PRAYER FOR RELIEF

Samsung denies that MyPort is entitled to the relief requested in paragraphs a)-f), or any other relief.

AFFIRMATIVE DEFENSES

Without admitting that it bears the burden of proof to any of them, Samsung asserts the following defenses in response to the allegations in the Complaint.

FIRST AFFIRMATIVE DEFENSE **(Non-Infringement)**

Samsung does not infringe and has not infringed, under any theory of infringement, including directly or indirectly (whether contributorily or by inducement), any valid, enforceable claim of the Patents-in-Suit, either literally or under the Doctrine of Equivalents, and has not committed any acts in violation of 35 U.S.C. § 271.

SECOND AFFIRMATIVE DEFENSE **(Invalidity)**

Each of the asserted claim of the Patents-in-Suit is invalid and/or unenforceable for failure to comply with one or more of the conditions of patentability set for the in Title 35 of the United States Code, Title 35, including, without limitation, 35 U.S.C. §§ 101, 102, 103, and/or 112, and the rules, regulations, and laws pertaining thereto.

THIRD AFFIRMATIVE DEFENSE **(Prosecution History Estoppel)**

Plaintiff is estopped from construing any valid claim of the Asserted Patents to cover or include, either literally or by application of the doctrine of equivalents, any of Samsung's products, methods, or systems due to prosecution history estoppel.

FOURTH AFFIRMATIVE DEFENSE **(Equity)**

Plaintiff is barred in whole or in part under principles of equity, including without limitation, acquiescence, prosecution laches, estoppel, waiver, misconduct, patent misuse, unfair competition, unclean hands, and/or other equitable defenses.

FIFTH AFFIRMATIVE DEFENSE
(No Injunctive Relief)

MyPort's claim for injunctive relief is barred because there exists an adequate remedy at law, and MyPort's claims otherwise fail to meet the requirements for such relief.

SIXTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

With respect to each purported claim for relief alleged in the Complaint, MyPort fails to allege facts sufficient to state a claim against Samsung upon which relief may be granted.

SEVENTH AFFIRMATIVE DEFENSE
(Not an Exceptional Case)

This is not an exceptional case justifying an award of attorney fees pursuant to 35 U.S.C. § 285.

EIGHTH AFFIRMATIVE DEFENSE
(No Willful Infringement)

MyPort is not entitled to enhanced damages under 35 U.S.C. § 284 because Samsung has not intentionally, wilfully, or deliberately infringed any claim of the Patents-in-Suit, or engaged in any egregious conduct.

NINTH AFFIRMATIVE DEFENSE
(Unenforceability)

The patents-in-suit are unenforceable because they are terminally disclaimed to one or more patents that is not jointly owned with each of the Patents-in-Suit.

TENTH AFFIRMATIVE DEFENSE

Without assuming the burden of proof on this issue and upon information and belief any claim for damages of the '017 and '067 patents before actual notice or the filing date of the Complaint is barred by a failure of one or more licensees to mark products that include photo

management software that, upon information and belief, practices one or more claims (including disclaimed claims) of each of the '017 and '067 patents.

ELEVENTH AFFIRMATIVE DEFENSE
(License)

On information and belief, MyPort IP, Inc., a predecessor in interest to MyPort, Inc., expressly licensed a portfolio of patents that includes the Patents-in-Suit. By its terms and through an assignment of that license to a supplier of products and services (including software) to Samsung, the accused Samsung products are licensed with respect to their use of such products or services.

RESERVATION OF RIGHTS

Samsung reserves any and all rights to amend its answer, including its currently pled defenses, and/or to add additional defenses, as any basis for doing so becomes apparent.

PRAYER FOR RELIEF

Wherefore, Samsung respectfully prays that this Court enter judgment against MyPort as follows:

- a. Dismissing the Complaint with prejudice;
- b. Finding that this case is exceptional pursuant to 35 U.S.C. § 285 and awarding Samsung its attorneys' fees incurred in this action;
- c. For an award of all costs incurred by Samsung in this action; and
- d. For all such other and further relief as this Court deems just and equitable.

JURY DEMAND

Samsung demands a trial by jury for all issues so triable.

Dated: September 12, 2023

Respectfully Submitted

By: /s/ *Melissa R. Smith*

Melissa R. Smith
TX Bar No. 24001351
melissa@gillamsmithlaw.com
GILLAM & SMITH, LLP
303 South Washington Ave.
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

Richard A. Edlin
Thomas D. Pease
GREENBERG TRAURIG, LLP
One Vanderbilt Avenue
New York, NY 10017
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
Email: edlinr@gtlaw.com
Email: thomas.pease@gtlaw.com

Andrew R. Sommer
GREENBERG TRAURIG, LLP
1750 Tysons Boulevard, Suite 1000
McLean, VA 22102
Telephone: (703) 749-1300
Facsimile: (703) 749-1301
Email: sommera@gtlaw.com

Cyrus T. Frelinghuysen
Jenna Kuh
GREENBERG TRAURIG, LLP
2101 L Street N.W. Suite 1000,
Washington, DC 20037
Telephone: (202) 331-3100
Facsimile: (202) 331-3101
Email: frelinghuysenc@gtlaw.com
Email: kuhj@gtlaw.com

***Attorneys for Defendants
Samsung Electronics Co., Ltd., and
Samsung Electronics America, Inc.***

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service and are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on September 12, 2023.

/s/ Melissa R. Smith